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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1886.**

No. 262.

JAMES N. CARPENTER, PLAINTIFF IN ERROR,

*vs.*

THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

**FILED JULY 2, 1884.**

474-578

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JUDD & DETWEILER, PRINTERS, WASHINGTON

1 *Declaration. Filed July 20th*, 1882.

In the Supreme Court of the District of Columbia, July 20th, 1882.

JAMES N. CARPENTER, Pl'ff,
*vs.*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. } At Law. No 23816.

The plaintiff sues the defendant, a company incorporated by an act of Congress of the United States, approved May 17th, 1862, entitled an Act to incorporate the Washington & Georgetown Railroad Company, for that the defendant, on the 24th day of April, 1882, was the owner and proprietor of a line of street railway on Pennsylvania avenue, in the cities of Georgetown & Washington, in the District of Columbia, and upon said railway defendant was a common carrier of passengers for hire in cars owned and used by it to carry passengers for hire; and plaintiff avers that defendant, on the date last said, was the owner and proprietor of another line of
2 street railway in the said city of Washington, on Seventh (7th) street of said city, which crosses the said line of railway of the cities of Georgetown and Washington at the intersection of said 7th street and Pennsylvania avenue, and which co-operated with the said first-named line of railway, so that passengers arriving at said point of intersection on a Pennsylvania-avenue car, having paid their fare on last said car, can then and there obtain a transfer ticket by virtue of which they could take passage on a car of said 7th-street line without paying any additional fare to that paid on the former line, and in like manner passengers arriving at said point of intersection on a car of the said 7th-street line, having paid their fare on that car, could then and there obtain a transfer ticket, by virtue of which they could take passage on the said Pennsylvania-avenue car without paying an additional fare to that paid on the former car; and plaintiff avers also that on said 24th day of April, 1882, at the point of intersection of 7th-street & F street northwest, in said city of Washington, he, the plaintiff, took passage on a car of said 7th-street line going to said point of intersection of 7th street and Pennsylvania avenue, and paid his fare on said 7th street car; that
3 on his reaching the point of intersection of 7th street and Pennsylvania avenue he left the car on which he took passage as aforesaid, went directly to the transfer-ticket agent of said company, who was stationed there, and who was immediately before him when he left said 7th-street car as aforesaid, and applied for and received from said ticket agent a transfer ticket with which he went to a car of said Pennsylvania-avenue line, which was then stopping at said point of intersection of said 7th street and Pennsylvania avenue, and plaintiff got on the car and offered the said 7th-street transfer ticket to the conductor of last said car, the said transfer ticket being the same that plaintiff had received as aforesaid, and which was sufficient to entitle plaintiff to passage on last said car to the terminus of its route, but said conductor refused to receive it, and refused passage upon it to the plaintiff; and plaintiff, insisting that it was his

right to take passage on last said car on said transfer ticket, refused to leave the car; whereupon, and without fault, negligence, or carelessness upon the part of the plaintiff, the said conductor,
4 whose name is J. B. McKenzie, and whose car is numbered forty (40), called in the driver of the car, and they, together, then and there forcibly ejected plaintiff from last said car, in so doing inflicting serious and painful injuries upon plaintiff's person.

2. And for that plaintiff at another time, to wit, on or about the 24th day of April, 1882, in the said city of Washington, at the intersection of 7th street with Pennsylvania avenue, entered into a passenger car of defendant, of said first-mentioned line, which then and there carried passengers for hire, and plaintiff then and there offered to the conductor of said car a transfer ticket which had immediately before been delivered to him, plaintiff, at the intersection of said 7th street and Pennsylvania avenue by the aforesaid ticket agent, whose name is George T. Thornton, whereby plaintiff was entitled to passage in last said car, he having, at said intersection of 7th street and Pennsylvania avenue, immediately and in view of said transfer-ticket agent, passed to said ticket agent from a car on said 7th-street line on which he had paid his fare as aforesaid, and received
5 the said transfer ticket from said ticket agent, but the said conductor refused to receive said transfer ticket, and refused to give passage to plaintiff, but, without any fault, carelessness, or negligence on the part of plaintiff, said conductor and the driver of the car, who was called in by the conductor to aid him, then and there, together, forcibly ejected plaintiff from said car, inflicting upon him in so doing serious and painful personal injuries.

And plaintiff claims $10,000, besides costs.

BENJ'N J. DARNEILLE,
*Att'y for Plaintiff.*

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise judgment.

BENJ'N J. DARNEILLE,
*Attorney for Plaintiff.*

*Summons. Issued July 20th,* 1882.

In the Supreme Court of the District of Columbia, the 20th day of July, 1882.

6 JAMES N. CARPENTER, Pl'ff,
*vs*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. } At Law. No. 23816.

The President of United States to the defendant, Greeting:

You are hereby commanded to appear in this court on the first day of its first special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit and show why he should

not have judgment against you for the cause of action stated in his declaration.

Witness: D. K. Cartter, Chief Justice.

[SEAL OF COURT.] R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Ass't Cl'k.*

NOTE.—The special terms of the court commence on the first Tuesday of every month, except August, in which month there is no term of the court.

On back:

Served copies of the declaration, notice to plead, affidavit, and this summons on the defendant by service on Henry Hurt, president, the 21st day of July, 1882.

C. E. HENRY, *Marshal.*

7 *Plea. Filed September 5th*, 1882.

In the Supreme Court of the District of Columbia, this 5th day of September, 1882.

JAMES N. CARPENTER
*vs.*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY. } At Law. No. 23816.

The defendant, for plea to the declaration of the said plaintiff, says that it is not guilty in manner and form as in said declaration alleged.

ENOCH TOTTEN,
*Att'y for Defendant.*

*Joinder and Note of Issue. Filed September 16th*, 1882.

In the Supreme Court of the District of Columbia, the 16th day of September, 1882.

JAMES N. CARPENTER, Pl'ff,
*vs.*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. } At Law. No. 23816.

8 The plaintiff joins issue upon the defendant's plea.

BENJ. J. DARNEILLE,
*Att'y for Plaintiff.*

CARPENTER
*vs.*
W. & G. R. R. Co. } At Law. No. 23816.

The clerk will please calendar the above-entitled case.

Last pleading filed September 16th, 1882.

BENJ. J. DARNEILLE,
*Att'y for Plaintiff.*
ENOCH TOTTEN,
*Attorney for Defendant.*

To the clerk.

Proceedings before the supreme court of the District of Columbia, holding a special term, and circuit court in and for said District, commencing the third Monday, it being the 15th day, of October, 1883.

MONDAY, *October 15th, A. D.* 1883.

By order of Arthur MacArthur, justice, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

9 MONDAY, *January 7th, A. D.* 1884.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

| | |
|---|---|
| JAMES N. CARPENTER, Pl'ff, *vs.* THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. | At Law. No. 23816. Cal. 176. |

Now comes here as well the plaintiff, by his attorney, Mr. Darneille, as the defendant, by its attorney, Mr. Totten, and a jury of good and lawful men of this District, to wit, Richard W. Gant, William Witthaft, William H. Rupp, William H. Gorgas, Daniel O'Leary, Upton H. Ridenour, Andrew H. Stockman, William B. Whiting, Carter A. Stewart, Lambert F. Follansbee, Robert V. Hughes, and Frederick G. Cowie, who, being duly sworn to try the issue above joined, after a partial hearing of the case, are respited until the meeting of the court to-morrow morning.

TUESDAY, *January 8th, A. D.* 1884.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

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|---|---|
| JAMES N. CARPENTER, Pl'ff, *vs.* THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. | At Law. No. 23816. Cal. 176. |

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after the case is given them in charge, retire to their room to consider of their verdict, with permission, if they agree, after reducing their verdict to writing, signing, sealing, and delivering the same to their foreman, to separate until the meeting of the court to-morrow morning.

WEDNESDAY, *January 9th, A. D.* 1884.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

JAMES N. CARPENTER, Pl'ff,
*vs.*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. } At Law. No. 23816. Cal. 176.

Now again come here the parties as aforesaid, in manner aforesaid, and the same jury return into court, and on their oath say they find said issue in favor of the defendant; therefore, it is
11 considered that the plaintiff take nothing by his suit, and that the defendant go thereof without day and recover against the plaintiff the costs of its defence, taxed at $49.55, and have execution thereof.

*Motion for a New Trial. Filed January 10th,* 1884.

Doc. No. 23816.

In the Supreme Court of the District of Columbia, Sitting as a Court of Law.

JAMES N. CARPENTER, Pl'ff,
*vs.*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. } At Law. No. 23816.

This cause came on to be tried by a jury on the 9th day of January, 1884, and the jury found a verdict for the defendant on the issue joined between the parties.

An now comes the plaintiff and moves the court to set aside the said verdict and to grant a new trial of the said issue on the following grounds, to wit:

1. That the said verdict was unreasonable.
2. That the said verdict was contrary to the evidence.

12 JOHN E. LATIMER,
BENJ'N J. DARNEILLE,
*Attorneys for Plaintiff.*

SATURDAY, *January 12th, A. D.* 1884.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

JAMES N. CARPENTER, Pl'ff,
*vs.*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. } At Law. No. 23816.

Upon hearing the plaintiff's motion for a new trial it is considered that said motion be, and the same is hereby, overruled.

THURSDAY, *January 24th, A. D.* 1884.

Session resumed pursuant to adjournment, MacArthur, justice, presiding.

JAMES N. CARPENTER, Pl'ff,
*vs.*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. } At Law. No. 23816.

Now again comes here the plaintiff, by his said attorneys, and tenders to the court here his bills of exceptions to the rulings
13 of the court on the trial of this cause and prays that they may be duly signed, sealed, and made a part of the record, which is done accordingly.

And now comes here the plaintiff, by his attorneys, John E. Latimer & Benj'n J. Darneille, and moves the court to grant a new trial in this cause on exceptions filed.

*Defendant's Bills of Exceptions. Filed January 24th,* 1884.

In the Supreme Court of the District of Columbia.

JAMES N. CARPENTER
*vs.*
WASHINGTON & GEORGETOWN R. R. Co. } At Law. No. 23816.

1st bill of exceptions. ——, plaintiff.

At the trial of this cause the plaintiff, to maintain the issue on his part joined, gave evidence tending to show that on the 24th day of April, 1882, at or about the corner of 7th St. and F St. N. W., in the city of Washington, D. C., he boarded one of the defendant's
14 cars; that he paid his fare, and that at the junction of Pennsylvania avenue and Seventh street he got off said car directly in front of the company's transfer agent, one Thornton, who was looking directly at him; that he obtained a transfer ticket from said agent and took his seat in a car belonging to said company, which was at that time waiting to convey passengers in an easterly direction along Penna. avenue; that plaintiff wished to go to the Navy Yard for the purpose of obtaining money to meet an obligation about to become due in bank; that he behaved in an orderly and decorous manner; that when about opposite to the junction of Sixth St. and Pennsylvania avenue N. W. and near the Metropolitan, the National, and other hotels, he was approached by the conductor of said car, who asked for his fare; thereupon plaintiff offered to said conductor, as evidence that he had already paid his fare, the ticket which he had obtained as aforesaid from the company's agent at the junction of Seventh St. and Penna. avenue (which said ticket, dated April 24th, 1882, was given in evidence at the trial below); whereupon the conductor refused to accept said ticket in payment of plaintiff's fare, but demanded further
15 payment or that plaintiff should leave the car, and upon the refusal of plaintiff to again pay fare or leave the car said con-

ductor called in the driver and they together violently ejected the plaintiff from said car, although the conductor admitted that he, while at the junction of Pennsylvania avenue, had been informed by the transfer agent that a mistake had been made by him in giving plaintiff a wrong transfer ticket; that, by reason of the violence used by the said conductor and car-driver in putting him off the car, plaintiff's shoulder and hands were severely hurt and backed wrenched to such extent as permanently to disable him, and on that account very soon thereafter he was obliged to have medical aid & attention by reason thereof; and, in continuance of testimony to above effect, Dr. Rixey, of the Naval Dispensary, Washington, D. C., was sworn, and gave testimony tending to show that he had, on or about April 24th, 1882, prescribed for plaintiff such medicines as are usually prescribed for sprains, bruises, &c.; also, that plaintiff was a man of somewhat delicate health, being subject to dyspepsia, &c. Mr. Shord, druggist at the Naval Dispen-
16 sary testified that he, about that time, compounded the above-named medicines for plaintiff on the prescription of Dr. Rixey. It further appears in evidence that plaintiff is a retired naval officer, bearing the rank of pay inspector. And it afterwards appeared from the evidence of one of defendant's witnesses, namely, one Golding, who was driver of said avenue car, and who assisted in ejecting plaintiff, that the conductor at the time said the transfer agent at the junction had called to and directed him not to let "that man (pointing out plaintiff) ride" (not mentioning name), because he had a wrong transfer.

And here the plaintiff rested.

Thereupon the defendant, to maintain the issue on its part joined as aforesaid, gave evidence to the jury tending to *to* show as follows, to wit: That on the day and just before the time when the plaintiff was ejected from the car of the defendant, the defendant's agent, Mr. Kidwell, who was stationed at the northeast corner of 7th street and Pennsylvania avenue as transfer agent, saw the plaintiff about three feet from the rear end of a Pennsylvania-avenue car,
17 which had just arrived from the east and was going towards the west, and which had stopped on the avenue, on the west side of the 7th-street line, for the purpose of discharging its passengers, and that said plaintiff was at that time coming with the said passengers, and had apparently just gotten off the said avenue car, and that he came with such passengers to the transfer agent and presented himself in their company, and with them applied for a transfer ticket, and that said plaintiff was given a transfer ticket on the 7th-street line, as were the other passengers, the defendant's said transfer agent supposing that he was going up or down 7th street; that the plaintiff received the said 7th-street transfer without remark and with it started towards a Pennsylvania-avenue car which had just come from the west, going east, and which was standing upon the east side of the 7th-street line and was about to start towards the east, and that the plaintiff proceeded to get upon the said last-mentioned car. Kidwell then called to the conductor

just and proper under the circumstances; which said instruction the court granted.

And thereupon the counsel for the plaintiff asked the court to instruct the jury: "That a railway company is liable for the wanton acts of its conductor in expelling a passenger from a street car;" which said instruction the court granted.

24 And thereupon the counsel for the plaintiff asked the court to instruct the jury: "That railroad companies, as to those persons to whom they place themselves under contract obligations as passengers, are held to the exercise of all reasonable care and diligence;" which said instruction the court granted.

And thereupon the counsel for the plaintiff asked the court to instruct the jury: "That if the jury believe from the evidence that the plaintiff was ejected from defendant's car by the conductor, or the conductor and driver, as alleged in the declaration, by an abuse of his or their authority, and any injuries resulted from their negligence or reckless performance of duty, the defendant is liable to the plaintiff;" which said instruction the court granted.

And thereupon the counsel for the plaintiff asked the court to instruct the jury as follows: "That if the defendant charges contributory negligence upon the plaintiff the burden of proof is upon the defendant;" which said instruction the court granted.

And thereupon the counsel for the plaintiff asked the court to instruct the jury: "That if the jury shall believe from the evi-

25 dence that the defendant's employees, or any of them, practiced upon the plaintiff gross negligence or malicious or wilful misconduct or violence, they may find for the plaintiff exemplary damages;" which said instruction the court granted; to the giving of each and every one of the foregoing instructions and prayers to the jury the defendant, by its counsel, then and there objected, but the court overruled the objection, and the said prayers and instructions were granted; and to the granting of said prayers and instructions the said defendant, by its counsel, then and there excepted, and the exceptions were severally duly noted at the time.

Thereupon the counsel for the plaintiff asked the court further to instruct the jury as follows, to wit: "That if the jury shall believe from the evidence that the plaintiff paid his fare on the 7th-street car, and, on arriving at Pennsylvania avenue, the Pennsylvania-avenue car of the defendant was then stopping at the crossing of the two lines (Pennsylvania avenue and 7th street), and plaintiff immediately, on arriving at the Pennsylvania avenue, went to the

26 transfer-ticket agent of said defendant there stationed and asked for and received a transfer ticket, and that then and there the transfer-ticket agent gave him a transfer ticket; that thereupon the plaintiff went immediately with said transfer ticket on board the said Pennsylvania-avenue car, and after the car started offered it, when called on in the usual way, to the conductor, who refused to receive it, but, together with the driver of the car, forcibly put plaintiff off the car, then they shall find for the plaintiff, even if they should also find that the transfer-ticket agent had given plaintiff a wrong ticket, either intentionally or by mistake;" but the court

refused to so instruct the jury, and the counsel for the plaintiff then and there excepted, and the exception was duly noted at the time, and he now asks the court to sign and seal this his first bill of exceptions, which is accordingly done, now for then, this 24th day of January, 1884.

ARTHUR MacARTHUR, [SEAL.]
*Justice.*

*2d Bill of Exceptions.*

Thereupon the counsel for the plaintiff asked the court further to instruct the jury as follows, to wit: "That if the jury shall
27 believe from the evidence that the ejection of the plaintiff from the Pennsylvania-avenue car resulted from the slightest neglect or misconduct of the transfer-ticket agent, or the conductor of the Pennsylvania-avenue car, then they shall find for the plaintiff;" but the court refused to so instruct the jury, and the counsel for the plaintiff then and there excepted, and the exception was duly noted at the time, and he now asks the court to sign and seal this his second bill of exceptions, which is accordingly done, now for then, this 24th day of January, 1884.

ARTHUR MacARTHUR, [SEAL.]
*Justice.*

*3d Bill of Exceptions.*

Thereupon the counsel for the plaintiff asked the court further to instruct the jury as follows, to wit: "That if the injury complained of could have been prevented by the exercise of ordinary care by defendant, the defendant is liable, even if plaintiff was at fault;" but the court refused to so instruct the jury, and the counsel for the plaintiff then and there excepted, and the exception was duly noted at the time, and he now asks the court to sign and seal this
28 his third bill of exceptions, which is accordingly done, now for then, this 24th day of January, 1884.

ARTHUR MacARTHUR, [SEAL.]
*Justice.*

*4th Bill of Exceptions.*

Thereupon counsel for the plaintiff asked the court to further instruct the jury as follows, to wit: "That if the jury shall believe from the evidence that the conduct of the defendant was wanton, then the negligence of the plaintiff, even if proved, would be no defence;" but the court refused to so instruct the jury, and the counsel for the plaintiff then and there excepted, and the exception was duly noted at the time, and he now asks the court to sign and seal this his fourth bill of exceptions, which is accordingly done, now for then, this 24th day of January, 1884.

ARTHUR MacARTHUR, [SEAL.]
*Justice.*

*5th Bill of Exceptions.*

And thereupon the court instructed the jury that if they believed from the evidence that the agents of the defendant had made a mistake in giving to the plaintiff a transfer ticket, and instead of giving him a Pennsylvania-avenue transfer had given him
29 a 7th-street transfer, that the plaintiff was entitled to recover, and that in assessing the damages the plaintiff was entitled to have reasonable damages compensatory for the treatment which he had received, and that the defendant company was bound to see to it that the plaintiff was provided with a proper transfer, and that if the mistake had been made the responsibility therefore rested upon the company and not upon the plaintiff.

And the court further instructed the jury that if, upon the other hand, they believed that the conduct of the agents of the company was wanton and malicious, and that they had purposely given him the wrong transfer, and that they had maliciously and wantonly ejected him from the car because of personal dislike or animosity, that then the plaintiff was entitled to recover, and in assessing damages, in that view of the case, the plaintiff was entitled to recover not only compensatory but vindictive damages, and to this latter branch of the instruction the defendant, by its counsel, then and there objected, and the objection was overruled and an exception was duly noted.

30 The court thereupon further instructed the jury that if the jury were satisfied from the evidence that the plaintiff did not get off from the 7th-street car, as related by him, but that he came from the west-bound avenue car, with the passengers from that car, and presented himself, with those passengers, to the transfer agent of the defendant, and that the plaintiff received the 7th-street transfer without objection or remark, and undertook to ride upon it on a Pennsylvania-avenue car, that the defendant was entitled to a verdict.

And thereupon the jury retired to consider of their verdict and they returned a verdict for defendant.

And the counsel for the plaintiff now prays the court to sign and seal this his bill of exceptions, containing the said evidence, rulings, opinions, and instructions; which is accordingly done, now for then, this 24th day of January, 1884.

ARTHUR MacARTHUR, [SEAL.]
*Justice.*

31 MEM.—It is hereby agreed that each of the foregoing exceptions shall be considered as referring to the evidence, as hereinbefore stated.

ENOCH TOTTEN,
*Attorney for Defendant.*

BENJ'N J. DARNEILLE,
*Attorney for Plaintiff.*

Poceedings before the supreme court of the District of Columbia, in general term, commencing on the fourth Monday, 28th day of January, A. D. 1884.

Present: Chief Justice Cartter and Justices MacArthur and James.

MONDAY, *April 14th, A. D.* 1884.

Session resumed pursuant to adjournment.

Present: Chief Justice Cartter and Justices MacArthur, Cox, and James.

JAMES N. CARPENTER, Pl'ff,
*vs.*
THE WASHINGTON & GEORGETOWN RAILROAD COMPANY, Def't. } At Law. No. 23816.

Now again come here the said parties, by their attorneys;
32 whereupon, because it appears to the court here that there is no error in the record and proceedings in this cause or in the judgment of the special term, therefore it is considered by the court here that the said judgment be, and it is hereby, affirmed with costs, to be taxed by the clerk, and that the defendant have execution thereof.

33 In the Supreme Court of the District of Columbia, the 10th day of May, 1884.

JAMES N. CARPENTER
*vs.*
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } In Error. No. 23816.

Know all men by these presents that we, James N. Carpenter and Wm. H. Holladay, are bound unto the above-named Washington and Georgetown Railroad Company in the sum of two hundred and fifty dollars, to be paid to the said Washington and Georgetown Railroad Company; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 10th day of May, 1884.

Whereas the above-named James N. Carpenter has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named James N. Carpenter shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

J. N. CARPENTER. [SEAL.]
W. H. HOLLIDAY. [SEAL.]

Sealed and delivered in presence of—
W. T. MILTON.
B. P. FRED.

Approved June 11th, 1884.
By the court:

D. K. CARTTER,
*Chief Justice.*

34 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said court before you, between James N. Carpenter, plaintiff, and The Washington and Georgetown Railroad Company, defendant, being No. 23816 at law, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 11th day of June, in the year of our Lord, 1884, and of the Independence of the United States the one hundred and eighth.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *To wit:*

To the Washington and Georgetown Railroad Company:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein James N. Carpenter is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER,
*Chief Justice.*

Service accepted June 11th, 1884.

ENOCH TOTTEN.

[Endorsed:] No. 23816. At law. James N. Carpenter *vs.* Washington and Georgetown R. R. Co. Writ of error.

35 AUTHENTICATION OF RECORD.

*Clerk's Certificate.*

CLERKS OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 28th day of June, 1884.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By J. JAY CAMP,
*Assistant Clerk.*

*Justice's Certificate.*

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by Return J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 28th day of June, 1884.

D. K. CARTTER, [SEAL.]
*Chief Justice.*

*Clerk's Certificate to Justice's Official Character.*

I, Return J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 28th day of June, 1884.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By J. JAY CAMP,
*Assistant Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 262. James N. Carpenter, plaintiff in error, *vs.* The Washington & Georgetown Railroad Company. Filed July 2, 1884.

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# Supreme Court of the U. S.

OCTOBER TERM, 1886

No. 262.

JAMES N. CARPENTER, Plaintiff in Error,

vs.

THE WASHINGTON & GEORGETOWN RAILROAD COMPANY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

—o—

## BRIEF FOR THE PLAINTIFF IN ERROR.

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## BRIEF FOR THE PLAINTIFF IN ERROR.

### STATEMENT OF THE CASE.

This action was brought to recover damages because of the forcible ejection of the plaintiff from a car of the defendant.

The defendant owns and operates a street railroad in the city of Washington, one line of cars running along Pennsylvania avenue and another along Seventh street.

The payment of one fare entitles the passenger to ride on both lines, by procuring from the agent of the defend-

ant at the junction of said avenue and Seventh street a transfer ticket. A passenger arriving at the junction on a Seventh street car is entitled to a transfer ticket receivable for fare on the Avenue cars.

The evidence on behalf of the plaintiff tended to show that he got on a car of the Seventh street line and paid his fare; that he rode on that car to Pennsylvania avenue, where he got off and at once applied to the agent of the defendant there stationed for a transfer ticket; that he received from said agent a ticket and went with it immediately to one of the defendant's Avenue cars, then in waiting at the junction of said Avenue and Seventh street, and got upon that car to resume his journey. The evidence shows that the transfer ticket which the plaintiff received from said agent was not receivable for fare on the Avenue line of defendant's road, but was a transfer ticket to be used on its Seventh street line. The conductor of the Avenue car refused to take this transfer ticket when offered by the plaintiff, but demanded of him payment of his fare. The plaintiff offered the transfer ticket, and refused any other payment of fare, and he was thereupon forcibly ejected from the car by the conductor and driver, sustaining such injuries as to permanently disable him.

The evidence tends further to prove that the agent of the defendant who gave the plaintiff said transfer ticket notified the said conductor, while said car remained at the junction of Seventh street and the Avenue, that he had made a mistake by giving the plaintiff a wrong transfer ticket.

The evidence on behalf of the defendant showed that the agents of the defendant knew the plaintiff and had

ill feeling towards him, because of some former trouble with him respecting transfers from one of defendant's car lines to another.

The plaintiff prayed the following instructions to the jury, which were refused by the Court, and the plaintiff excepted :

"That if the jury shall believe from the evidence that the plaintiff paid his fare on the Seventh street car, and, on arriving at Pennsylvania avenue, the Pennsylvania avenue car of the defendant was then stopping at the crossing of the two lines (Pennsylvania avenue and Seventh street), and plaintiff immediately, on arriving at Pennsylvania avenue, went to the transfer-ticket agent of said defendant there stationed and asked for and received a transfer ticket, and that then and there the transfer-ticket agent gave him a transfer ticket ; that thereupon the plaintiff went immediately with said transfer ticket on board the said Pennsylvania avenue car, and after the car started offered it, when called on in the usual way, to the conductor, who refused to receive it, but, together with the driver of the car, forcibly put plaintiff off the car, then they shall find for the plaintiff, even if they should also find that the transfer-ticket agent had given plaintiff a wrong ticket, either intentionally or by mistake ;"

"That if the jury shall believe from the evidence that the ejection of the plaintiff from the Pennsylvania avenue car resulted from the slightest neglect or misconduct of the transfer-ticket agent, or the conductor of the Pennsylvania avenue car, then they shall find for the plaintiff ;"

"That if the injury complained of could have been prevented by the exercise of ordinary care by defendant, the defendant is liable, even if plaintiff was at fault ;"

"That if the jury shall believe from the evidence that the conduct of the defendant was wanton, then the negligence of the plaintiff, even if proved, would be no defence."

The jury found for the defendant. Plaintiff's motion to set aside the verdict and grant a new trial was overruled by the Circuit Court. The judgment of the Circuit Court was affirmed by the General Term, and the plaintiff obtained a writ of error.

## Assignment of Error.

First. The Court erred in refusing to give the instructions prayed for by the plaintiff.

Second. The Court erred in not setting aside the verdict and granting a new trial.

## Points of Law and Fact.

The facts proven in the case tend strongly to show a willful, wanton assault upon the plaintiff by the agents of the defendant, and an indignity offered him wholly unjustified, even if it be conceded that the mistake in obtaining the transfer ticket was imputable to him rather than to the agent of the defendant.

The evidence shows that the mistake was discovered by the agents of the defendant before the Avenue car on which the plaintiff took passage left Seventh street. The conductor of the car was notified of the mistake by the transfer agent in time to have notified the plaintiff and to have the error corrected.

See pages 6 and 7 of the printed record.

No effort appears to have been made by the agents of the defendant to notify the plaintiff of the mistake in time for him to correct it. They made no effort to rectify the error themselves.

The jury may well have believed, from the evidence, that the conduct of the defendant's servants in ejecting the plaintiff from the car was wanton and malicious.

The Court should therefore have instructed the jury as prayed by the plaintiff: "That if the jury shall believe from the evidence that if the conduct of the defendant was wanton, then the negligence of the plaintiff, even if proved, would be no defense."

"Where the conduct of the defendant is wanton and wilful, or where it indicates that degree of indifference to the rights of others which may justly be characterized as recklessness, the doctrine of contributory negligence has no place whatever, and the defendant is responsible for the injury he inflicts irrespective of the fault which placed the plaintiff in the way of such injury."

Cooley on Torts, p. 674.
Sherman and Redfield on Negligence, § 2 and 37.
Davis v. Mann, 10 Mes. & W., 546.
Brownwell v. Flagler, 5 Hill, 282.
New Haven Steamboat Co. v. Vanderbilt, 16 Conn. 420.
Troy v. Vt. Cen. R. R. Co., 24 Vt., 487.
See also Young v. Pa. R. R. Co., 5 Cen. Rep., 848.

The conduct of the defendant's agents in this case was the more reckless and wanton, because they were bound to observe towards the plaintiff the utmost caution and vigilance for his protection while he was a passenger upon the defendant's cars.

Pa. Co. v. Roy, 102 U. S., 451.

The evidence tends to show that the plaintiff paid his fare and became entitled to ride on the car from which he was forcibly ejected. The evidence also tends to

show that he made an effort in good faith to comply with the regulation of the defendant as to procuring a transfer ticket; that he obtained the wrong ticket may or may not have been his error under the circumstances. That was for the jury to determine. But the defendant having knowledge of the mistake immediately after it occurred, and when it might have been corrected, and refusing to make any effort to rectify the error, and forcibly ejecting the plaintiff from the car, is such reckless disregard of a passenger's right as to make the defendant responsible for the injuries inflicted.

C. C. COLE,
W. L. COLE,
Attorneys for Plaintiff.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1886.

JAMES N. CARPENTER,
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THE WASHINGTON & GEORGETOWN RAILROAD COMPANY.

No. 262.

## Brief for Defendant in Error.

### STATEMENT OF THE CASE.

The plaintiff below undertook to establish to the jury the following facts, to wit:

That on the 24th of April, 1882, he boarded a car of the defendant's on 7th street near the corner of F street, in Washington, in order to go, by way of Pennsylvania avenue, to the Navy Yard, and that he paid the fare; that he got off the car at the junction of 7th street and Pennsylvania avenue, and that he so got off directly in front of one Thornton, the transfer agent of the defendant, who was looking at him, and who gave him a "transfer" ticket; that he took his seat in a car of the defendant then standing on Pennsylvania avenue ready to convey passengers in an easterly direction along said avenue;

when the conductor approached him to get his fare, he offered the ticket so given to him at the junction, and that the conductor refused to receive it and demanded payment of the fare or that plaintiff should leave the car; that he refused to pay and also refused to leave the car, whereupon he was ejected and injured.

The defendant gave evidence to the jury in proof of the following facts, to wit:

That on the 24th of April, 1882, the plaintiff was seen by the transfer agent standing about three feet in rear of a Pennsylvania avenue car, which had just arrived from the east on its journey westward, which was standing on the avenue on the west side of the 7th street line, for the purpose of discharging its passengers, and that the plaintiff was coming with said passengers and had apparently just gotten off that avenue car, and he came with the said passengers to the transfer agent and applied, with them, for a transfer ticket, and that he was given a transfer ticket entitling him to ride on the 7th street line, as were the other passengers in his company, the transfer agent supposing him to be going up or down 7th street; the plaintiff received such transfer without remark, and started towards a Pennsylvania avenue car going eastward, which had just stopped and was standing on the east side of said 7th street line and was about to go east, and that the plaintiff got upon the last mentioned car; that the transfer agent called the attention of the conductor of such car to the fact that there was a passenger on the car with a ticket which did not entitle him to ride on that line; that the plaintiff lived on Capitol Hill, and had been well-known to the transfer agents of the defendant as a

traveller on said lines for upwards of ten years; that they had frequently detected him in trying to obtain transfers to which he was not entitled, and in other violations of the company's rights: that different transfers were used every day, and those entitling persons to ride on Seventh street were different in color from those which were used on the Pennsylvania avenue line; that the plaintiff was a man about 59 years of age, and a retired officer of the United States Navy, with the rank of Pay Inspector; that there were two transfer agents at the junction, one of whom was stationed at the north-east, and the other at the south-east corner of said junction; the transfer agent, Thornton, mentioned by the plaintiff as the person who gave him the transfer, testified that he did not give the plaintiff the transfer and was not there, another transfer agent named Kidwell, testified that he, and not Thornton, gave the plaintiff the transfer on the occasion in question; this witness, Kidwell, also testified that on the occasion mentioned, when he gave the transfer ticket to the plaintiff, the plaintiff did not get off from a south-bound 7th street car as plaintiff had testified, and that he did not present himself for a ticket at the time of the arrival of the south-bound 7th street car; the agents of the defendant used no more force than was necessary to eject the plaintiff from the car upon which he undertook to ride; that they tried to persuade the plaintiff to peaceably leave the car, and that he refused to do so; that he resisted with all his might the effort to eject him, and was ejected by overpowering force, and that he was put off from the rear platform of the car on to the pavement and landed upon his feet.

After the testimony was closed, the plaintiff offered a great many prayers, many of which were granted and many of which were refused, but upon examination it will appear that the instructions of the court voluntarily given and embodied in the 5th exception (Record, p. 12), together with the prayers asked for and granted by the court, were much more favorable to the plaintiff than he was entitled to have, and that if either party can justly complain of them it is the defendant in error.

## Points and Authorities.

The prayer offered by the plaintiff, which is contained in the first exception (p. 10), does not state the law accurately. A conductor of a car has no discretion; he must collect the fare or receive a ticket. If the agent happens to give the passenger the wrong ticket, it is the passenger's duty to pay the fare or leave the car. He has his remedy at law for the breach of contract.

*Townsend* vs. *R. R.*, 56 N. Y. 295;
*Yorton* vs. *R. R.*, 6 A. & E. R. R. cases;
*Hall* vs. *R. R.*, 9 A. & E., R. R. cases, 348;
*Mosher* vs. *R. R.*, 17 Fed. R., 880;
*Mosher* vs. *R. R.*, 23 Fed. R., 326.

The three prayers set out in the second, third and fourth exceptions were not applicable to the case, and were properly refused.

The instruction of the court to the jury contained in the first and second paragraphs of the fifth exception (12) are certainly as favorable to the plaintiff as the law authorizes. The defendant below might

have good cause of complaint. But the brief for the plaintiff in error makes no objection to the matters contained in this exception: (5th) and it is therefore assumed that the exception taken below is now abandoned as untenable.

The judgment of the court below should be affirmed.

ENOCH TOTTEN.
*For Defendant in Error.*